

The opinion below is hereby signed.

Date signed January 30, 2006



S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
U. S. BANKRUPTCY JUDGE
 SITTING BY DESIGNATION

UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF MARYLAND
 (Greenbelt Division)

In re)	
)	
WILLIAM D. KNIGHT,)	Case No. 04-32809
)	(Chapter 13)
Debtor.)	

OPINION RE PARTIALLY GRANTING MOTION TO AVOID
 JUDICIAL LIEN PURSUANT TO 11 U.S.C. § 522(f) (BANK OF AMERICA)

The debtor's motion to avoid the \$36,355.07 judicial lien of Bank of America contains a calculation which demonstrates that \$11,073.61 is the "Extent to Which Lien Claimants Impair Exemption." Under § 522(f)(1), a judicial lien is avoidable only "to the extent that such lien impairs an exemption to which the debtor would have been entitled" Yet, the debtor proposes to avoid the lien not just to the \$11,073.61 extent to which the lien impairs the debtor's exemption, but in the entire amount. The avoidance of the lien under § 522(f) will be limited to \$11,073.61 of the lien.

The debtor's motion further alleges that the judicial lien is avoidable as a preference and that an unsecured claim filed by

Bank of America "acts as a waiver of an assertion of a lien in these proceedings by estoppel." Under F.R. Bankr. P. 7001, a preference avoidance action must be brought as an adversary proceeding. F.R. Bankr. P. 7001(1) and (2) and Advisory Committee Note (1983) ("Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§ 544, 545, 547, 548 and 549 of the Code[.]"). Similarly, the attack on the lien's validity based on Bank of America's alleged waiver of the assertion of its lien must also be brought as an adversary proceeding. F.R. Bankr. P. 7001(2).

An order follows avoiding the lien of Bank of America to the extent of \$11,073.61 and otherwise denying the motion to avoid the lien.

[Signed and dated above.]

Copies to: Debtor; Debtor's Attorney; Bank of America c/o Theodore R. Goldstock; Bank of America c/o The Corporation Trust, Inc.; chapter 13 trustee.